

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
SUN RIVER BASIN (41K)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Jason D. Bailey; Kathryn L. Bailey;  
Lee B. Janetski; Geri G. Ray; **Vicki A.  
Janetski**

**CASE 41K-0012-R-2023**  
41K 26136-00  
41K 26137-00

OBJECTOR: Lee B. Janetski

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

The above-captioned claims appeared in the Preliminary Decree for the Sun River (Basin 41K) and received Objections from Lee Janetski.

The claims were decreed with the following issue remarks:

41K 26136-00:

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

41K 26137-00:

POINT OF DIVERSION AND MEANS OF DIVERSION WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

On March 10, 2023, the above-captioned claims were consolidated into Water Court Case 41K-0012-R-2023 and a status conference was held on April 11, 2023. On May 11, 2023, Objector Lee Janetski filed a Statement Regarding Proposed Abstracts. The Statement requested the addition of Vicki Janetski as a Claimant of both claims as well as modifications to the point of diversion and place of use for claim 41K 26136-00 and the place of use for claim 41K 26137-00.

On July 21, 2023, an Order Setting Filing Deadline was issued, ordering Jason Bailey, Kathryn Bailey and Gery Ray to file documentation on the May 11 Statement and documentation showing good cause why they failed to appear at the status conference. On August 3, 2023, Jason and Kathryn Bailey filed documentation indicating they agreed with and approved of the proposed abstract changes.

### FINDINGS OF FACT

1. Pursuant to the Statement and supporting evidence Vicki Janetski should be added as a co-owner to claims 41K 26136-00 and 41K 26137-00.
2. Pursuant to the Statement, claim 41K 26136-00 should be corrected as follows to reflect the historical point of diversion and more accurately describe the place of use:

**\*Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr</u> | <u>Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|------------|------------|------------|------------|------------|---------------|
| 1         |                 | N2SE       | S2SE       | 9          | 20N        | 3E         | CASCADE       |

**\*Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |         |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|---------|
| 1         | 22.00 13.00  |                 | S2NWSE         | N2SE       | 9          | 20N        | 3E            | CASCADE |
| 2         | 4.00         |                 | SWNESE         | 9          | 20N        | 3E         | CASCADE       |         |
| 3         | 3.00         |                 | NWSESE         | 9          | 20N        | 3E         | CASCADE       |         |
| 4         | 2.00         |                 | NESWSE         | 9          | 20N        | 3E         | CASCADE       |         |
| Total:    | 22.00        |                 |                |            |            |            |               |         |

3. Pursuant to the Statement, claim 41K 26137-00 should be corrected as follows to more accurately describe the place of use:

**\*Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |         |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|---------|
| 1         |              |                 | S2NWSE         | N2SE       | 9          | 20N        | 3E            | CASCADE |
| 2         |              |                 | SWNESE         |            | 9          | 20N        | 3E            | CASCADE |

4. The issue remarks on the claims are notice-type remarks that have served their purpose and should be removed from the claims.

## PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. Section 3-7-224, MCA the Water Court is directed to conduct hearings in the same manner as for other civil actions. The Water Court applies the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Evidence (M.R.Evid.) and the Montana Uniform District Court Rules. This Master considers documents filed with the Court as “other paper” under M.R.Civ.P. Rule 11(b)(3) which certifies that to the best of the parties knowledge the factual contentions contained within the Statement are supported by evidence.

4. Add to this rule the recognition that “the heart of a judicial process is the development of the truth through conflict between parties with adverse interests.” United States of America (USDI) –Bureau of Indian Affairs)-General Objection to Basin 42B and 42C Preliminary Decrees, Case 42B-1, ¶ 3 at p. 14, (Order Denying Motion June 27, 2014). Considering these tenets, significant weight is given to the filings to establish the accurate historical use of the claims.

### **CONCLUSIONS OF LAW**

1. Vicki Janetski should be added as a co-owner to claims 41K 26136-00 and 41K 26137-00. The point of diversion and place of use for claim 41K 26136-00 and place of use for claim 41K 26137-00 should be modified as discussed above.

2. The issue remarks appearing on the claims are notice type remarks that have served their purpose and should be removed.

### **RECOMMENDATION**

1. Upon review the record in this case, the claims should be modified as discussed above and the issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are attached to this Master’s Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Jason D. Bailey  
Kathryn L. Bailey  
97 Sun River Road  
Great Falls, MT 59404-6319

Geri G. Ray  
77 Sun River Road  
Great Falls, MT 59404-6319

**Vicki A. Janetski**  
**PO Box 376**  
**Great Falls, MT 59403-0376**

**Service via Electronic Mail:**

John E. Bloomquist  
Betsy R. Story  
PARSONS BEHLE & LATIMER  
~~3355 Colton Drive, Suite A~~  
**201 E. Broadway St.**  
**PO Box 104**  
Helena, MT 59624  
(406)-410-5050  
ecf@parsonsbehle.com  
bstory@parsonsbehle.com  
jbloomquist@parsonsbehle.com

**Note: Caption and Service List Updated 7-25-2023**

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 26136-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

LEE B JANETSKI  
PO BOX 376  
GREAT FALLS, MT 59403 0376

VICKI A JANETSKI  
PO BOX 376  
GREAT FALLS, MT 59403 0376

JASON D BAILEY  
97 SUN RIVER RD  
GREAT FALLS, MT 59404 6319

KATHRYN L BAILEY  
97 SUN RIVER RD  
GREAT FALLS, MT 59404 6319

GERI G RAY  
77 SUN RIVER RD  
GREAT FALLS, MT 59404 6319

**Priority Date:** DECEMBER 31, 1920

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 374.00 GPM

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 22.00

**Source Name:** SUN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1         |                 | N2SE           | 9          | 20N        | 3E         | CASCADE       |

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** PUMP

PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

**Period of Use:** APRIL 1 TO OCTOBER 31

**Place of Use:**

| <u>ID</u>     | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|---------------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1             | 13.00        |                 | S2NWSE         | 9          | 20N        | 3E         | CASCADE       |
| 2             | 4.00         |                 | SWNESE         | 9          | 20N        | 3E         | CASCADE       |
| 3             | 3.00         |                 | NWSESE         | 9          | 20N        | 3E         | CASCADE       |
| 4             | 2.00         |                 | NESWSE         | 9          | 20N        | 3E         | CASCADE       |
| <b>Total:</b> | 22.00        |                 |                |            |            |            |               |

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

26136-00

26137-00

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 26137-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

LEE B JANETSKI  
PO BOX 376  
GREAT FALLS, MT 59403 0376

VICKI A JANETSKI  
PO BOX 376  
GREAT FALLS, MT 59403 0376

JASON D BAILEY  
97 SUN RIVER RD  
GREAT FALLS, MT 59404 6319

KATHRYN L BAILEY  
97 SUN RIVER RD  
GREAT FALLS, MT 59404 6319

GERI G RAY  
77 SUN RIVER RD  
GREAT FALLS, MT 59404 6319

**Priority Date:** DECEMBER 31, 1920

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SUN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

| <u>ID</u>                   | <u>Govt Lot</u>              | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------------------|------------------------------|----------------|------------|------------|------------|---------------|
| 1                           |                              | N2SE           | 9          | 20N        | 3E         | CASCADE       |
| <b>Period of Diversion:</b> | JANUARY 1 TO DECEMBER 31     |                |            |            |            |               |
| <b>Diversion Means:</b>     | PUMP                         |                |            |            |            |               |
| 2                           |                              | N2SE           | 9          | 20N        | 3E         | CASCADE       |
| <b>Period of Diversion:</b> | JANUARY 1 TO DECEMBER 31     |                |            |            |            |               |
| <b>Diversion Means:</b>     | LIVESTOCK DIRECT FROM SOURCE |                |            |            |            |               |



**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1         |              |                 | S2NWSE         | 9          | 20N        | 3E         | CASCADE       |
| 2         |              |                 | SWNESE         | 9          | 20N        | 3E         | CASCADE       |

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

26136-00

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